

EXHIBIT H

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 CASE NO. 3:19-cv-00041

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6 SCOTT ALLEN TOMEI, :

7 Plaintiff, :

8 vs. :

9 PARKWEST MEDICAL CENTER and :

10 COVENANT HEALTH, :

11 Defendants.:

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15 DEPOSITION OF MICHAELA WHIDBY

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D E P O S I T I O N

2

The deposition of Michaela Whidby, taken at
the request of the Plaintiff, for purposes of
discovery, pursuant to the Tennessee Rules of Civil
Procedure on the 17th Day of December, 2019, at the
offices of Arnett, Draper & Hagood, LLP, 800 S. Gay
Street, 2300 First Tennessee Plaza, Knoxville,
Tennessee 37901 before Catherine Golembeski,
Registered Professional Reporter and Notary Public
at Large for the State of Tennessee.

11

It is agreed that the deposition may be
taken in machine shorthand by Catherine Golembeski,
Licensed Court Reporter and Registered Professional
Reporter and Notary Public, and that she may swear
the witness and thereafter transcribe her notes to
typewriting and present to the witness for
signature, and that all formalities touching
caption, certificate, filing, transmission, etc.,
are expressly waived.

20

It is further agreed that all objections
except as to the form of the questions are reserved
to on or before the hearing.

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1 EXAMINATION

2 (Proceedings began at 1:11 p.m.)

3 MICHAELA WHIDBY,

4 called as a witness at the instance of the
5 Plaintiff, having been first duly sworn, was
6 examined and deposed as follows:

7 EXAMINATION BY MR. ROZYNSKI:

8 Q. Good afternoon. My name is Andrew
9 Rozynski. I'm with the law firm of Eisenberg and
10 Baum. And I represent Mr. Tomei in the matter
11 against Parkwest. I brought you here to take your
12 deposition.

13 Have you ever had your deposition taken
14 before?

15 A. No.

16 Q. Since it's your first time, I'm going
17 to go over some of the ground rules. As you can
18 see, the court reporter is taking down everything
19 that we're saying. And she's making a transcript
20 of this.

21 A. Okay.

22 Q. You are sworn to tell the truth.

23 You're under oath, which means that if you
24 willfully lie you could be subject to penalties.

25 Okay?

1 A. Uh-huh.

2 Q. It's really important that we have a
3 clear record. So how we do that is that we give
4 affirmative responses. It's things that court
5 reporter hate is when witnesses do things like
6 um-hum, or uh-huh, or shake their head, or nod
7 their head, or make grunts or point to things
8 without describing what they are. So I'll ask that
9 you give verbal responses. And if you're referring
10 to something that you state on the record what it
11 is you're referring to. Okay?

12 A. Okay.

13 Q. All right. Also it's not a memory
14 test. So if you don't remember something, it's
15 perfectly fine to say that you don't remember.

16 A. Okay.

17 Q. Also too, I don't want you to guess.
18 So if you're guessing, please let me know. And I'm
19 happy to, you know, rephrase the question, or ask
20 you a different question. Okay?

21 A. Okay.

22 Q. However, I do want your best memory,
23 recollection or estimate. So what that means is,
24 if I ask you when something happened and you
25 remember it happened in October of 2017, but you

1 don't know the exact date in October 2017, instead
2 of saying I don't remember when it happened, you
3 could say I believe it happened in October of 2017.
4 Do you understand?

5 A. Yes.

6 Q. Also too, I don't expect this to be a
7 very long deposition. However, if you need to take
8 a break at any time, we can take a break. I'll
9 just ask that you don't do that in the middle of a
10 question. Okay?

11 A. Okay.

12 Q. Also, it's really important that you
13 just wait until I finish asking my question before
14 you answer the question. Only because the record
15 won't be as clear if we're talking over each other.
16 And I'll do my best not to ask my next question
17 until you finish your answer. Okay?

18 A. Okay.

19 Q. All right, great. So we'll get
20 started.

21 Who's your current employer? Well,
22 first, could you please state your name and address
23 for the record.

24 A. Michaela Whidby, address is 932
25 Bradleyville Drive, Knoxville, Tennessee 37938.

1 Q. **And who's your current employer?**
2 A. Parkwest Medical Center.
3 Q. **And for how long have you worked there?**
4 A. About two years.
5 Q. **Okay. And when did you start there?**
6 A. August of 2017.
7 Q. **And what is your current position**
8 **there?**
9 A. I'm a social worker.
10 Q. **And have you been a social worker since**
11 **you started working at Parkwest?**
12 A. Yes.
13 Q. **And where did you work prior to**
14 **Parkwest?**
15 A. I worked for Helen Ross McNabb in the
16 mobile crisis unit.
17 Q. **How long were you there for?**
18 A. About a year-and-a-half.
19 Q. **And prior to that, where did you work?**
20 A. I was in graduate school at UT.
21 Q. **Okay. And what's the highest level of**
22 **education that you've obtained?**
23 A. Masters degree.
24 Q. **In social work?**
25 A. Yes.

1 Q. Could you tell me a little bit about
2 your general job duties as a social worker at
3 Parkwest Medical Center?

4 A. Yes. So I am in charge of discharge
5 planning. I primarily place people into placement
6 with skilled nursing facilities, rehab, that's my
7 primary workload.

8 Q. All right. Do you know who Scott Tomei
9 is?

10 A. Yes.

11 Q. Do you have a memory of him as you sit
12 here today?

13 A. Yes.

14 Q. Okay. Is Mr. Tomei a deaf man?

15 A. Yes.

16 Q. Okay. And I want to talk about your
17 training that you received when you first became an
18 employee of Parkwest Medical Center. Okay?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. All right. Briefly describe what your
23 training looked like when you first arrived at
24 Parkwest?

25 A. My prior training or what, like?

1 **Q. Orientation or training, you know, that**
2 **kind of stuff?**

3 A. Yeah. So we complete just, like, kind
4 of general training, on-the-job just to learn about
5 Parkwest Medical, their policies, procedures. And
6 then we have a series of online programs that we
7 have to complete within a certain amount of months.

8 **Q. Okay. How long was your orientation?**

9 A. Probably about two weeks.

10 **Q. Okay. And during your orientation, did**
11 **you learn about providing language access to people**
12 **who don't speak English?**

13 A. Yes.

14 **Q. Okay. Other than during your**
15 **orientation, did you receive any additional**
16 **training about providing language access to people**
17 **who don't speak English?**

18 A. Through the online programs that we
19 use.

20 **Q. Okay. And how often do you receive**
21 **materials or training on that?**

22 A. Those are yearly.

23 **Q. Okay. Have you ever had a patient who**
24 **spoke a language other than English?**

25 A. Yes.

1 **Q.** What are the essential languages that
2 you've experienced?

3 **A.** Mostly Spanish.

4 **Q.** Do you speak Spanish?

5 **A.** No.

6 **Q.** Okay. When you have a patient who
7 speaks Spanish, how do you communicate with that
8 patient?

9 **A.** I mostly go in after, like, the nurse
10 or somebody else and kind of, depending on the
11 preference, if there's a live interpreter or if
12 there's family or we have a video interpreter
13 service.

14 **Q.** Okay. So for patients that speak
15 Spanish, you'll use a live interpreter, family
16 members or a video interpreter service?

17 **A.** Uh-huh.

18 **Q.** Is that a yes?

19 **A.** Yes.

20 **Q.** And how do you decide what you'll use?

21 **A.** For my role it's -- I can use family
22 for discharge planning services. I know that the
23 chart has a paper on what they can use too, or
24 normally, I just go to the nurse and ask them how
25 they've been communicating with them.

1 Q. Okay. So when you have people who
2 speak Spanish, you usually will go to family
3 members first?

4 A. I will go in the room first.

5 Q. And is it only if there are no family
6 members there that speak English then you'll get an
7 interpreter?

8 A. Yeah. Then I ask, usually, ask the
9 patient, once I have an interpreter, how they want
10 interpretive services. If this means or if they
11 prefer another means.

12 Q. Okay. So during your training, you're
13 not trained on that it's typically inappropriate to
14 use family members as interpreters?

15 A. No, that can be one of the, I think,
16 that could be one of the services, a member of the
17 family.

18 Q. All right. So you've never been
19 trained on what potential downfalls of using family
20 members as interpreters?

21 A. I don't remember that specifically.

22 Q. Okay. And do you recall ever getting
23 any training that you should only use family
24 members in emergency situations?

25 A. I think that's listed in the training.

1 Q. Okay.

2 A. I don't remember that right off the top
3 of my head.

4 Q. Okay. For someone who speaks Spanish,
5 why is it important to communicate with them in
6 their primary language?

7 A. So, I guess, you can get directly from
8 the patient.

9 Q. Okay. What do you mean by that?

10 A. Like whatever questions or whatever
11 answers you have.

12 Q. And have you ever been trained that you
13 should only communicate with a patient in their
14 primary language?

15 A. I don't know.

16 Q. Okay. Do you know how to get an
17 in-person interpreter?

18 A. Yes.

19 Q. How do you get an in-person
20 interpreter?

21 A. We would go either to the charge nurse
22 who would contact the house supervisor. And I
23 think they call it's Knoxville School for the Deaf
24 and they would dispatch somebody.

25 Q. From the Knoxville School for the Deaf?

1 A. I believe so.

2 Q. Okay. And have you ever utilized a
3 professional in-person interpreter before?

4 A. Yes. Not at the hospital, though.

5 Q. Okay. Outside the hospital, where have
6 you utilized one?

7 A. When I was at mobile crisis, yeah.

8 Q. Okay. What kind of interpreter did you
9 use at mobile crisis?

10 A. We would either use live or video.

11 Q. Okay. What languages?

12 A. Spanish, and I think I had deaf at
13 mobile crisis too.

14 Q. But you never had an in-person
15 interpreter at Parkwest so far, professional?

16 A. I don't remember.

17 Q. Okay. How do you -- are you familiar
18 with something called Stratus?

19 A. Yes.

20 Q. What's Stratus?

21 A. Online video interpreter that we use.

22 Q. Okay. Have you ever used Stratus
23 before?

24 A. Yes.

25 Q. When have you used Stratus?

1 A. I've used it several times.

2 Q. **With what kind of languages?**

3 A. Mostly Spanish speaking. That's all
4 that I can remember I've used it with.

5 Q. **You only remember using it for Spanish?**

6 A. Correct.

7 Q. All right. Have you ever been trained
8 that lipreading is often an unreliable form of
9 communication with a deaf person?

10 A. I don't know.

11 Q. Okay. Have you had any training either
12 it's an appropriate way to communicate with nobody
13 or inappropriate way to communicate with someone,
14 lipreading?

15 A. I'm not sure.

16 Q. How about whether -- pros and cons of
17 writing with a deaf person instead of using
18 language such as sign language, have you been
19 trained one way or another if that's appropriate or
20 not appropriate?

21 A. No. I don't think, specifically, no.

22 Q. Okay. You said Mr. Tomei you knew him
23 to be a deaf man. Is that correct?

24 A. Yes.

25 Q. Okay. And did you ever -- do you

1 **recall hearing his voice?**

2 A. No.

3 Q. **Do you know one way or the other if he**
4 **can speak intelligibly or not?**

5 A. No.

6 Q. **Did you observe him communicating with**
7 **his hands or using sign language?**

8 A. Yes.

9 Q. **Are you, yourself, familiar with sign**
10 **language?**

11 A. No. Well, I was taught the alphabet
12 when I was little, but I don't know it at all.

13 Q. **You don't remember it?**

14 A. No.

15 Q. **So you've already testified that you've**
16 **never used an in-person or you don't recall using**
17 **an in-person interpreter or using the Stratus for**
18 **sign language. Is that correct?**

19 A. Correct.

20 Q. **All right. Did you ever try to**
21 **communicate with Mr. Tomei?**

22 A. Not with him directly. I communicated
23 with his wife.

24 Q. **Okay. And did you understand his wife**
25 **to be deaf or hard of hearing?**

1 A. Hard of hearing, yes.

2 Q. Okay. And did you observe her using
3 sign language with Mr. Tomei?

4 A. Yes.

5 Q. Okay. How did you know that Mrs. Tomei
6 knew sign language?

7 A. I just saw her communicating with him.

8 Q. Okay. How many interactions did you
9 have with Mrs. Tomei?

10 A. I only recall one.

11 Q. Okay. And what do you recall -- what's
12 the first thing you recall about that interaction?

13 A. I don't remember.

14 Q. Okay. And did you walk into the room?

15 A. Yes.

16 Q. Did you see -- do you have any specific
17 recollection of, like, a timeline of events when
18 you were in there?

19 A. I probably introduced myself and said
20 why I was there and she must have replied to me.

21 Q. Okay. And what did -- you said -- but
22 you don't have a specific recollection of that. Is
23 that right?

24 A. Not exactly what I said or what
25 happened.

1 Q. Okay. All right. Do you recall what
2 Mr. Tomei looks like?

3 A. Vaguely, yes.

4 Q. What does he look like?

5 A. White male. I don't recall him having
6 much hair, but maybe it was dark. Maybe he had
7 facial hair. That's all that I remember.

8 Q. And do you recall what Mrs. Tomei
9 looked like?

10 A. No.

11 Q. Okay. And so what do you remember
12 about that interaction, if anything?

13 A. So I remember I went in there to do
14 discharge planning needs and see what he needs when
15 he goes home. I was informed by the physical
16 therapist that he did not want to go to a rehab, he
17 wanted to go home. I kind of already knew that
18 information because I went in right after her.

19 And so I remember introducing myself to
20 the wife. And I'm pretty sure I vaguely remember
21 her telling him who I was and why I was there. And
22 she must have replied to me. I did my assessment
23 with her.

24 Q. Okay. And do you remember that
25 specifically, doing an assessment with her or you

1 **said I must have?**

2 A. No, I did the assessment with her. I
3 do remember that.

4 **Q. Okay. What questions did you ask her?**

5 A. I can't remember specifically. I can
6 tell you the questions I normally ask.

7 **Q. What are the questions you normally
8 ask?**

9 A. Like I ask, we try to get a baseline
10 where they were before they came in the hospital.
11 So I would have asked who they live with, are they
12 independent with, like, daily living things, you
13 know. Do they drive? Who their primary care
14 doctor is? Any kind of light medical equipment
15 they used. We're trying to gauge where they were
16 before they came in the hospital and then assess
17 what they need for when they leave.

18 **Q. Okay. Did you review any documents to
19 prepare for today?**

20 A. Yes.

21 **Q. What did you review?**

22 A. I reviewed my notes.

23 **Q. How many notes did you review?**

24 A. I think it was my initial assessment,
25 then a follow-up note that I wrote. Then I think

1 the case manager note was also there, in there, who
2 I work with.

3 **Q. If I gave you the medical record, would**
4 **you be able to identify those notes?**

5 A. Uh-huh.

6 **Q. Is that a yes?**

7 A. Yes.

8 **Q. Okay. Let me give you that.**

9 MR. ROZYNSKI: I'll mark it as an
10 exhibit, Exhibit-1. This is the medical record for
11 the October 26th, 2017 admission.

12 (Plaintiff's Exhibit 1, Medical
13 Records, were marked for
14 identification.)

15 **Q. Okay. What I've marked is --**

16 MR. YOUNG: Hold on. I was talking
17 about this exhibit. I don't have an objection to
18 her talking about pages that she has inputted
19 information on, but I don't think she's qualified
20 to talk to the completeness or the content of the
21 chart.

22 MR. ROZYNSKI: That's not what this is
23 being introduced for. I just want to set the
24 foundation.

25 MR. YOUNG: That is for foundation?

1 MR. ROZYNSKI: Of course, yeah.

2 MR. YOUNG: Okay.

3 MR. ROZYNSKI: I'm not using her to
4 certify these are certified medical records or that
5 she can testify that these are complete or anything
6 of that sort. I just asked if I gave you the
7 medical records, would you be able to identify your
8 notes. And she said yes. So I gave her the
9 medical record.

10 MR. YOUNG: Okay.

11 Q. So here's the medical record. Do you
12 know where your notes are in that record?

13 A. Not directly.

14 Q. All right. So let's go to page 196.
15 Is that a note by you here?

16 A. Yes.

17 Q. Is this the note you were talking
18 about?

19 A. Yes.

20 Q. So on 196 it says: "Refer to social
21 work. Comments for initial assessment." It says
22 signed by you. Is that accurate?

23 A. Yes.

24 Q. Okay. And the comments for initial
25 assessments says SW. Is that social worker?

1 A. Yes.

2 Q. Met with PT. Is that patient?

3 A. Yes.

4 Q. "And wife in room to discuss transition
5 of care needs. Patient and wife are both deaf, but
6 wife is able to translate." Was it your
7 understanding you weren't able to communicate with
8 Mr. Tomei directly?

9 A. Yes, without a translator.

10 Q. Without his wife or without a
11 translator?

12 A. Both. I could have communicated by
13 writing.

14 Q. But you didn't?

15 A. But I did not.

16 Q. Okay. And you don't know how well Mr.
17 Tomei could write because you never wrote with him?

18 A. Correct.

19 Q. Okay. Did you know if it was
20 appropriate to use a hard of hearing wife as a
21 translator to a patient?

22 A. I don't know.

23 Q. Okay. You said patient -- at the last
24 sentence here it says: "Patient can not be called
25 as he is deaf. So needs to be texted." And it

1 lists a number (865)216-3476 or call (865) 271-9639
2 wife's video phone. So you believe that Mr. Tomei
3 did not have a phone to call?

4 A. I was told that that was his phone,
5 216-3476. And he could text at that phone.

6 Q. But you weren't aware that he had a
7 phone number that he could be called through the
8 telephone directly?

9 A. No.

10 Q. There's some acronyms here says HHC.
11 What's that?

12 A. Home healthcare.

13 Q. What's DME?

14 A. Durable medical equipment.

15 Q. What's O2?

16 A. Oxygen.

17 Q. BIPAP?

18 A. Bipap and CPAP are breathing devices.

19 So I don't know what their acronyms are for.

20 Q. Okay. Where did you get that patient
21 also requires a walker?

22 A. Probably from the physical therapy.

23 Q. You didn't get that directly from the
24 patient or the wife?

25 A. I don't remember.

1 Q. Okay. So there's some stuff in here
2 that you could have gotten from other sources other
3 than directly from the wife?

4 A. Could be, yes.

5 Q. And you don't know what you got from
6 the wife and what you got from other sources?

7 A. I don't remember.

8 Q. Okay. All right. Let's go to the next
9 page, 197. There's progress notes here. Is this
10 your note? What's note number one?

11 A. Yes.

12 Q. At 10/30/2017 at 12:03 p.m. it says
13 Michaela Whidby, SW. Is that social worker?

14 A. Yes.

15 Q. Informed by CM. What's CM?

16 A. Case manager.

17 Q. That Dr. Pollock will only follow HHC.
18 Do you know what that is?

19 A. Home healthcare physical therapy. It's
20 PT.

21 Q. So you got this from the case manager
22 this information?

23 A. Yes.

24 Q. Is any of that information in this note
25 something that you got from the patient or his

1 wife?

2 A. What do you mean?

3 Q. Okay. There's an entry that says:

4 "Social worker informed patient in room by writing
5 on white board that only home healthcare patient
6 physical therapy is set up and he's required to see
7 primary care physician for the other."

8 A. Okay.

9 Q. Do you have a specific memory of
10 writing with Mr. Tomei on a white board?

11 A. Vaguely.

12 Q. Okay. What exactly did you write on
13 the white board, if you remember?

14 A. I don't remember exactly what I wrote
15 on the white board.

16 Q. And you don't know what he responded
17 with on the white board?

18 A. No.

19 Q. Do you know where the white board was
20 located in the room?

21 A. It would have been on the wall.

22 Q. So would Mr. Tomei had to get out of
23 his bed to write back with you?

24 A. Yes.

25 Q. For him to be able to communicate with

1 **you through the white board?**

2 A. Uh-huh.

3 **Q. Is that a yes?**

4 A. Yes.

5 **Q. And do you have a specific recollection**
6 **of Mr. Tomei getting out of his bed walking to**
7 **write on the white order?**

8 A. I don't remember him being in the bed.
9 I remember him being in a wheelchair, leaving the
10 room.

11 **Q. Okay. Was he in the wheelchair writing**
12 **on the white board?**

13 A. No.

14 **Q. So you don't know how he was -- whether**
15 **writing on the white board, if at any time?**

16 A. Not on the white board, no.

17 **Q. Okay. Was Mr. Tomei being discharged**
18 **against medical advice here?**

19 A. I don't know.

20 **Q. Do you sometimes get involved when**
21 **patients are being discharged against medical**
22 **advice?**

23 A. Not usually, unless there's any, like,
24 specific discharge needs that they have.

25 **Q. Were there any other notes that you**

1 **reviewed other than these two notes?**

2 A. No.

3 Q. **Do you know how to personally set up a**
4 **VRI machine?**

5 A. Like the Stratus?

6 Q. **Yup.**

7 A. Yes.

8 Q. **How do you set it up?**

9 A. Like how to obtain the translator on
10 there or how?

11 Q. **Actually, set up the system, connect it**
12 **and get it up and running with the interpreter?**

13 A. It's already connected. I know how to
14 click on the app and obtain a translator, yes.

15 Q. **Okay. And if you did that here, that**
16 **would have been noted in the record?**

17 A. Yes.

18 Q. **Okay. And if there was a professional**
19 **in-person translator, you would have noted that in**
20 **your record?**

21 A. Yes.

22 Q. **Okay. And there was none of that noted**
23 **in the record, correct?**

24 A. Correct.

25 Q. **And this is, you said, that you were**

1 **wheeling him out of the...**

2 A. I was not wheeling him out.

3 Q. **You saw him in a wheelchair?**

4 A. Yes.

5 Q. **And he was about to leave?**

6 A. From what I recall, yes.

7 Q. **And you do not remember seeing a VRI or
8 in-person interpreter being used?**

9 A. I don't remember.

10 MR. ROZYNSKI: Could we mark this as
11 Exhibit 2. This is the Covenant Health Rights and
12 Responsibilities for Deaf and Hard of Hearing.

13 (Plaintiff's Exhibit 2, Covenant Health
14 Rights and Responsibilities for Deaf
15 and Hard of Hearing, was marked for
16 identification.)

17 Q. **I've marked this as Exhibit 2. It's an
18 eight-page document, Covenant Health Deaf and Hard
19 of Hearing Rights and Responsibilities. I'm going
20 to show it to you. Have you ever seen this before?**

21 A. I'm sure, but I don't remember
22 specifically.

23 Q. **Okay. When you say I'm sure, what do
24 you mean by that?**

25 A. I would imagine it would have been in

1 my training when I started Parkwest.

2 **Q. But you have no recollection of it?**

3 A. I mean, I remember reading it when I
4 first was hired or at least reviewing it.

5 **Q. Have you ever done any communication
6 assessment form for a deaf and hard of hearing
7 individual?**

8 A. It's not my role.

9 **Q. Okay.**

10 MR. YOUNG: If you're going to ask her
11 questions about the policy, she's needs to be able
12 to sit here and read it.

13 MR. ROZYNSKI: She's welcome to read
14 it.

15 MR. YOUNG: Okay. Take as much time as
16 you need.

17 **Q. Were you able to review the policy?**

18 A. Yes.

19 **Q. Okay. Let's go to page four.**

20 MR. YOUNG: May I see this?

21 (Witness Complies.)

22 **Q. Let's go to page four of the policy.**

23 **Q. Were you familiar or were you aware of the policy
24 in letter I in that paragraph of that policy?**

25 A. I don't remember at the time if I was

1 or not. I would hope that I was, because I was a
2 new hire and would have reviewed it then.

3 Q. As you sit here today, did you remember
4 that?

5 A. As of today, yes.

6 Q. Prior to reading it or before or after
7 reading it?

8 A. No, it's familiar now after reading it.

9 Q. Okay. So it says: "Some persons who
10 are deaf or hard of hearing may prefer or request
11 to use a family member or friend as an interpreter
12 or to facilitate communication. However, family
13 members or friends of the person will not be used
14 unless; A, specifically requested by the individual
15 who is deaf or hard of hearing, the family member
16 or friend agrees to provide the assistance and
17 reliance on the family member or friend is
18 appropriate under the circumstances, see J below;
19 or B, in an emergency situation involving imminent
20 threat to the safety or welfare of the patient or
21 public when no interpreter is available. The offer
22 of auxiliary aids and services and the response
23 should be documented in the patient's medical
24 records." You would agree that in your notes there
25 was no indication that Mr. Tomei preferred to use a

1 **family member as an interpreter and that a**
2 **qualified interpreter was offered to him?**

3 A. I did not chart that in my notes,
4 correct.

5 Q. **So if a family member was preferred by**
6 **Mr. Tomei, would you have noted that in your notes?**

7 A. I don't know if I would have
8 specifically noted that or not.

9 Q. **Were you aware of letter J, that number**
10 **four, that education related to medication,**
11 **discharge instructions, et cetera that you should**
12 **use a qualified interpreter even if the patient**
13 **prefers a family member?**

14 MR. YOUNG: Hold on for a second. I
15 want to object. I think the question misstates
16 what the policy says.

17 Q. **Are you aware --**

18 MR. YOUNG: Can you restate the
19 question, please?

20 MR. ROZYNSKI: Madam Court Reporter,
21 could you repeat the question.

22 (The Court Reporter reads back the
23 requested text.)

24 MR. YOUNG: My objection was, I think
25 that misstates what the policy says.

1 MR. ROZYNSKI: Okay.

2 Q. So are you aware of that?

3 MR. YOUNG: You can answer the
4 question, but first review the policy. And then
5 you can answer his question.

6 A. I don't know if I was then.

7 Q. Okay. Could you go to the last page of
8 this document. I'll show it to you here. It's
9 communication assessment tool for deaf or hard of
10 hearing individuals. Have you ever seen this
11 before?

12 A. Yes.

13 Q. Have you ever filled one out?

14 A. No.

15 Q. Okay. When have you seen this?

16 A. In the policy.

17 Q. When did you see it in the policy?

18 A. I don't remember.

19 Q. Okay. Is there anything else you
20 remember about your interactions with Mr. Tomei or
21 his wife that you haven't already testified to?

22 A. Not specifically.

23 Q. How about generally, other than what
24 you already testified to?

25 A. No.

1 MR. ROZYNSKI: Okay. Thank you for
2 your time.

3 MR. YOUNG: I have a quick question.

4 EXAMINATION BY MR. YOUNG:

5 Q. At any point in time during your
6 interactions with Mr. Tomei or Miss Tomei, did they
7 ever request an interpreter?

8 A. No.

9 Q. Did they ever request VRI?

10 A. No.

11 Q. Did she ever indicate to you in any way
12 that they weren't or let me back up.

13 Miss Tomei ever indicate to you in any
14 way she was not understanding what you were saying?

15 A. No.

16 Q. How many -- you've been at Parkwest for
17 two years?

18 A. Yes.

19 Q. How many deaf patients have you worked
20 with in two years?

21 A. This is the only one I recall.

22 Q. If they had requested an interpreter,
23 what would you have done?

24 A. I would have probably asked the nurse
25 how they were using interpreters, at least gotten

1 -- either went to the house supervisor, depending
2 if they needed a live interpreter or went and got
3 the Stratus myself.

4 Q. Have you ever had a problem using the
5 Stratus with other patients?

6 A. No.

7 Q. This form that you talked about, this
8 language assessment form, I think that's what it
9 is, communication assessment form. Is that
10 something that is typically completed before your
11 involvement?

12 A. Yes.

13 Q. Does your involvement deal with medical
14 issues involved in the discharge?

15 A. No.

16 Q. Your involvement is more setting up
17 home healthcare?

18 A. Any kind of services for after
19 discharge.

20 Q. What's your understanding of whose
21 responsibility it is to provide medical advice with
22 regard to discharge?

23 A. The doctor.

24 Q. Okay. Is it your understanding of
25 Covenant's policy that there is a preference for

1 **using an interpreter or VRI?**

2 A. There's no preference.

3 **Q. Okay. We've been talking about this**

4 **Part J. As I'm reading Part J it says:**

5 "Nonprofessional interpreters (family members or
6 friends) maybe appropriate and request of the hard
7 of hearing patient companion and designated
8 representative, depending on the complexity and
9 nature of the communication. However, a qualified
10 interpreter may be necessary to insure effective
11 means of communication for patients and companions.

12 The following circumstances may be sufficiently
13 linked to your complex to require an interpreter."
14 Were you -- did you suspect a situation of abuse or
15 neglect?

16 A. No.

17 **Q. Were you providing a consent for
18 treatment, surgery or procedure?**

19 A. No.

20 **Q. Did you discuss with anyone a diagnosis
21 or specific treatment?**

22 A. No.

23 **Q. Were you given the education related to
24 medication or discharge instructions?**

25 A. Not -- no.

1 Q. Were you using medical terminology with
2 them?

3 A. No.

4 Q. Okay. When you walked into the room,
5 was another caregiver just leaving?

6 A. Physical therapist, from what I recall.

7 Q. And have you observed her communicating
8 with Miss Tomei and Mr. Tomei before you walked in?

9 A. Yes.

10 Q. Based on the interaction, did you feel
11 like a method of communication had already been
12 established?

13 A. Yes.

14 Q. When you wrote on the white board the
15 information that you wrote down, what were they
16 doing?

17 A. From what I remember, I do not -- the
18 wife was not in the room, and that he was getting
19 ready to leave.

20 Q. So did you stop him from leaving to
21 show him that information?

22 A. From what I remember, yes.

23 Q. And what did you write down?

24 MR. YOUNG: What are you showing the
25 witness?

1 MR. ROZYNSKI: I'm sorry, I'm looking
2 at page 197 of the chart. And I think we actually
3 used the exhibit up there.

4 A. I wrote down, I don't remember
5 specifically, that he would only receive home
6 healthcare physical therapy and that not skilled
7 nursing or occupational therapy. And he would have
8 to follow-up with his doctor if he wanted those
9 services.

10 Q. Okay. You can continue to look at the
11 chart. I've got my own here.

12 A. Okay.

13 Q. Looking at page 196 of the chart. The
14 phone numbers you have there at the bottom, would
15 that have been information that would have been
16 given to you by Miss Tomei?

17 A. Yes.

18 Q. The comment that patient lives alone
19 but wife lives close to him. Is that information
20 you would have gotten from Miss Tomei?

21 A. Yes.

22 Q. The Plaintiff's primary care physician,
23 is that information you would have gotten from Miss
24 Tomei?

25 A. What was that?

1 **Q. Primary care physician is Howard**
2 **Holmes?**

3 A. Yes, it would have been on his face
4 sheets, I believe. And I would have just confirmed
5 that with him that that was correctly listed.

6 **Q. Did you observe him communicating**
7 **independently of you while you were there?**

8 A. Yes.

9 **Q. What types of communication were taking**
10 **place?**

11 A. Sign language.

12 **Q. Were they texting at all?**

13 A. I don't remember if they were texting
14 back and forth.

15 MR. ROZYNSKI: Okay. That's it. Thank
16 you.

17 (Deposition was concluded at 2:04 p.m.)

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C E R T I F I C A T E

2 STATE OF TENNESSEE

3 COUNTY OF KNOX

4 I, Catherine Golembeski, Licensed Court
5 Reporter and Registered Professional Reporter, do
6 hereby certify that I reported in machine shorthand
7 the deposition of MICHAELA WHIDBY, called as a
8 witness at the instance of the Plaintiff, that the
9 said witness was duly sworn by me; that the reading
10 and subscribing of the deposition by the witness
11 was waived; that the foregoing pages were
12 transcribed under my personal supervision and
13 constitute a true and accurate record of the
14 deposition of said witness.

15 I further certify that I am not an attorney
16 or counsel of any of the parties, nor an employee
17 or relative of any attorney or counsel connected
18 with the action, nor financially interested in the
19 action.

20 *Cathy J. Golembeski*
21

22 Catherine Golembeski, LCR# 778
23 Registered Professional Reporter

24

25

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